


STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: June 26, 2023

AGENCY: DHS
FH #: 8622212M

In the Matter of the Appeal of	:
	: DECISION
	AFTER
	: FAIR
	HEARING
from a determination by the New York City	:
Department of Social Services	:

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on July 3, 2023, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Agency appearance waived by the Office of Administrative Hearings

ISSUE

Was the Agency's determination to deny the Appellant's application for temporary housing assistance on the ground that the Appellant failed to demonstrate that other housing is unavailable to her, correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. On May 24, 2023, the appellant, age 24, applied to the Agency for temporary housing assistance for herself, her partner, age 29 and their one-year-old son.

2. On June 21, 2023, the Agency denied the Appellants' application for temporary housing assistance on the ground that the Appellant failed to demonstrate that other housing is unavailable at [REDACTED].

3. The Reasonable Housing Option (RHO) the Agency recommended for the Appellant is in where the Appellant's mother resides.

4. On June 26, 2023, the Appellants requested this fair hearing.

APPLICABLE LAW

At a fair hearing concerning the denial of an application for assistance, the Appellant must establish that the Agency's denial of assistance was not correct. 18 NYCRR 358-5.9(a).

Sections 351.1 and 351.2 of the Regulations requires each applicant for assistance to provide complete, accurate, and current information as to his/her needs and resources and to submit verification of income, and other factors in order to enable the Agency to determine eligibility.

Section 351.8 of the Regulations governs the Agency's decision on initial eligibility for assistance. If the Agency determines that eligibility has been fully established through investigation or that emergency need and presumptive eligibility has been established and an authorization for assistance has been made, the application should be accepted for assistance. However, if the information given by the applicant establishes, without the need for further investigation, that the applicant is ineligible for assistance or if ineligibility is determined in the course of or on completion of the investigation or if the applicant refuses to comply with any requirement essential to the determination of eligibility, the application should be denied.

Section 352.23(a) of the Regulations provides that resources shall be so utilized as to eliminate or reduce the need for public assistance, rehabilitate the client and conserve public funds through assignment and recovery. Applicants and recipients shall generally be required to utilize available resources and to apply for and otherwise pursue potentially available resources.

Section 352.35(c) of the Regulations states that, as a condition of eligibility for temporary housing assistance, individuals and families must comply with the requirements of this subdivision. Temporary housing assistance will be denied under the conditions specified below. Temporary housing assistance will not be denied for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member.

Section 352.35(f) of the Regulations states that a homeless individual or family applying for or receiving temporary housing assistance is subject to the income and resource requirements of this Title; and must cooperate with the social services district's efforts to determine available resources, and must apply for and use any benefits and resources that will reduce or eliminate the need for temporary housing assistance, in accordance with the provisions of this Title.

Section 352.35(g) of the Regulations states that a social services district must deny a person's or family's temporary housing assistance if it determines that the person or family has other housing available.

Section 352.35(h) of the Regulations states that any individual or family whose application for temporary housing assistance is denied pursuant to subdivision (c) or (g) of this section, is entitled to a fair hearing, in accordance with subpart 358-3 of this Title.

Administrative Directive 94 ADM-20, dated December 29, 1994, requires local districts to provide services and assistance to prevent homelessness and to meet temporary housing and other immediate needs of eligible homeless persons. Districts must have procedures to: (a) ensure that emergency needs of homeless persons are evaluated and that homeless persons are advised of their rights to emergency and ongoing assistance; (b) permit persons who are in danger of becoming homeless to notify the district of such danger and to seek the assistance of the district in avoiding homelessness; (c) ensure that homeless persons or persons in danger of becoming homeless can apply for temporary housing whenever such housing is needed; (d) identify and, where appropriate, meet the immediate food and other immediate health and safety needs of eligible homeless persons; (e) provide Medical Assistance (MA) to otherwise eligible homeless persons; and (f) provide temporary housing assistance as soon as possible to eligible homeless persons who have no other available temporary or permanent housing. Pursuant to this ADM, the district must make reasonable efforts to determine the applicant's eligibility prior to providing temporary housing assistance. It is the expectation that assistance will be provided within 48 hours of application for such assistance.

With respect to the provision of temporary housing, the ADM indicates that persons who resided in housing immediately prior to requesting such temporary housing assistance and who were not made homeless as a result of a legal eviction or an emergency such as a fire, flood or other condition which rendered the premises uninhabitable are not presumed to be in immediate need of assistance. In these cases, the district must make every reasonable effort to verify the applicant's eligibility for assistance and is obligated to provide temporary housing assistance only upon verification that other temporary or permanent housing is not available. When placing persons in temporary housing or when transferring persons between temporary housing accommodations, a district must attempt, but is not required, to make placements within these persons' community, giving consideration to the children's educational needs, employment needs, medical needs, and childcare needs.

A district must meet emergency needs of eligible persons and determine, based upon the particular circumstances, the most appropriate temporary housing assistance for such persons. Homeless persons do not have the right to choose their own temporary placements. The overriding concern is the district's efforts to locate, secure and pay for housing which meets basic standards of health and safety, as set forth in applicable Department regulations. When the district determines that a particular temporary housing placement is appropriate, the homeless person must accept the placement unless, in the district's judgment, he or she has good cause for refusing to do so. It may be good cause if the homeless person would be unable to participate in

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medical, alcohol or drug treatment or in employment or training because of a transportation hardship created by the location of the temporary housing placement.

DISCUSSION

The record establishes that on May 24, 2023, the Appellant, age 24, applied to the Agency for temporary housing assistance for herself, her partner, age 29 and their one-year-old son. On June 21, 2023, the Agency denied the Appellant's application for temporary housing assistance on the ground that the Appellant failed to demonstrate that other housing is unavailable at [REDACTED].

An applicant for temporary housing assistance is required to cooperate with the Agency's certification process and must provide the Agency with information concerning potential available resources and potential sources of temporary housing. Another requirement for receipt of temporary housing assistance is a lack of other housing and the burden of establishing such a lack is placed on the applicant.

The Agency contends that the Appellant can reside with the Appellant's mother, the primary tenant, (PT) at [REDACTED], a four-bedroom residence designated as the Recommended Housing Option (RHO). The Agency stated that on June 16, 2023, the Agency conducted a field visit to [REDACTED], and interviewed the primary tenant, [REDACTED] who stated to the Agency investigators that she had resided at the place for over twenty years; and that the Appellant resided at her residence but was asked to leave because of over crowdedness at her apartment.

At the hearing, the Appellant stated that the PT asked them to leave because her apartment was overcrowded with 9 people staying there at the time; but more because she does not get along with her mother; gets into constant argument with her mother; and that her mother's apartment was not conducive for her and her one-year-old child. The Appellant stated further that her son has no crib to sleep in and that the air crib she got for her son was not safe.

Above all, the PT asked her to leave because of the restrictions on the PT's lease and her possible eviction from her apartment if they were to remain at the RHO because she was not on the PT's lease. The Appellant however stressed that her concern was for the PT not to lose her apartment for violating the terms of her lease. The Agency's position is that the RHO is still available to the Appellant. The Appellant however stated that the PT was vehement in her decision that they should move; that, in essence, they were 'evicted.'

Asking the Appellant to move back to the RHO will result in a violation of the PT's lease which would in turn, result to the eviction of the PT. Accordingly, the record establishes that the recommended housing option set forth by the Agency is not a viable one for the Appellant and the Agency has failed to establish that there is any other housing option available to them.

Accordingly, the Agency's determination to deny the Appellant's application for temporary housing was not proper.

DECISION AND ORDER

The Agency's determination to deny the Appellant's application for temporary housing assistance is not correct and is reversed.

1. The Agency is directed to immediately provide the Appellant's household with temporary housing assistance to reside in a DHS family shelter.

2. The Agency is further directed to preclude the residence at [REDACTED]
[REDACTED].

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
07/12/2023

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to be "Michael J. [unclear]", written over a horizontal line.

Commissioner's Designee

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